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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,262	12/12/2003	Jean Cotteret	LORE:012US	9785
7590	05/01/2006		EXAMINER	
Mark B. Wilson Fulbright & Jaworski L.L.P. Suite 2400 600 Congress Avenue Austin, TX 78701			ELHILO, EISA B	
			ART UNIT	PAPER NUMBER
			1751	
			DATE MAILED: 05/01/2006	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/735,262	COTTERET ET AL.
	Examiner Eisa B. Elhilo	Art Unit 1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 December 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8, 10-11 and 22-51 is/are rejected.
- 7) Claim(s) 9 and 12-21 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/25/2004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

Claims 1 51 are pending in this application.

## **DETAILED ACTION**

### *Claim Objections*

1 Claim 8 objected to because of the following informalities:

The claims recite the term “preferably chosen from”. This term should be replaced by the term “selected from the group consisting of” to make the claims in the proper form. Appropriate correction is required.

2 The examiner makes of record that claims 28, 30-31, 33 and 43 recite a broad range of percentages or numbers followed by a narrow percentage range or numbers. For examination purposes, the examiner asserts that the narrow percentage ranges or numbers recited in the instant claims 28, 30-31, 33 and 43 are merely exemplary ranges or numbers, and thus, the prior art will be applied against the broadest ranges or numbers recited in claims 28, 30-31, 33 and 43. Further, the examiner suggests that applicant should delete the narrow ranges or numbers from the instant claims 28, 30-31, 33 and 43, and add new dependent claims that recite the narrow ranges and numbers recited in the instant claims 28, 30-31 and 43. Furthermore, the examiner suggests that applicant should delete the narrow limitation of the component recited in claim 49 “preferably hydrogen peroxide” and add new dependent claim that recites the limitation of the component recited in claim 49.

### *Claim Rejections - 35 USC § 103*

3 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 10-11, 22-31, 35 and 38-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lim et al. (US 6,461,391 B1) in view of Lang et al. (US 6,383,231 B1).

Lim et al. (US' 391 B1) teaches a hair dyeing composition comprising oxidation base of cationic tertiary para-phenylenediamine having a formula (1), which is similar to the claimed formula (1), when in the reference formula (1), R, R1 and R2 are alkyl radicals, R4 is hydrogen atom or an alkyl radical and R5 is a hydrogen atom as claimed in claims 1-8 and 10-11 (see col. 2, lines 44-50) and when in the claimed formula (1), R2 represents the onion radical Z of the claimed formula (II), R3 is a hydrogen atom, n is 1 or 0 and R1 is an alkyl radical. ) and anionic and nonionic surfactants (see col. 8, lines 23-25). Lim et al. further, teaches the compounds 1-(4-aminophenyl)-N,N-dimethyl-N-pentylpyrrolidin-3-ammonium iodide and 1-(4-aminophenyl)-N-(2-hydroxyethyl)-N,N-dimethylpyrrolidin-3-ammonium iodide which are structurally similar to the claimed compounds as claimed in claims 22-26 (see col. 19, Example 22 (compound 7) and col. 26, Example 29 (compound 14)). The cationic tertiary para-phenylenediamine is represented in the amount of 0.01 to about 5.0%, which is within the claimed range as claimed in claim 25 (see col. 3, lines 43-46, cationic polymers such as cationic resins as claimed in claim 39 (see col. 8, line 57), thickening polymers as claimed in claim 40 (see col. 8, line 45), surfactants such as anionic surfactants as claimed in claim 41 (see col. 8, line 23), additional oxidation bases such as paraphenylenediamine and couplers such as m-phenylenediamines as claimed in claims 42, 44 and 45 (see col. 5, line 66 and col. 7, line 64), wherein the primary intermediates (oxidation bases) and the couplers are used in equivalent amounts in the range of 0.001 to about 10 which within the claimed ranges as claimed in claims 43 and 46 (see col. 7, lines 8-15), wherein the

composition further comprises direct dyes as claimed in claim 47 (see col. 7, line 20-54), hydroxylated solvents such as ethanol as claimed in claim 48 (see col. 8, line 15), oxidizing agent of hydrogen peroxide as claimed in claim 49 (see col. 9, line 66). Lim et al. (US' 391 B1) also teaches a similar process for dyeing hair as claimed in claim 50 (see col. 9, lines 60-65).

The instant claims differ from the reference by reciting specific species of anionic surfactants and kit for dyeing hair.

However, Lim et al. (US' 391 B1) suggests the use of anionic surfactants in the hair dyeing composition (see col. 8, lines 23-25). It is further taught by Lim et al. (US' 391 B1) that the surfactants are included in the dyeing composition for various reasons, e.g., to assist in thickening, for forming emulsion, to help in wetting hair during application of the dye composition, etc. (see col. 8, lines 30-33).

Lang et al. (US' 231 B1) in analogous art of hair dyeing formulation, teaches a composition comprising anionic surfactants of oxyalkylenated carboxylic ether acid having a formula (V), which is similar to the claimed formula (Va) as claimed in claims 27-29 (see col. 4, lines 30-43), wherein the anionic surfactants are presented in the amounts of 0.5 to 15% and 0.1 to 10% which are within the claimed ranges as claimed in claims 30-31 (see col. 5, lines 8-13). Lang et al. (US' 231 B1) also teaches a kit for dyeing hair as claimed in claim 51 (see col. 18, claim 40).

Therefore, in view of teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made, would be motivated to modify the dyeing composition of Lim et al. (US' 391 B1) by incorporating the anionic surfactants of oxyalkylenated carboxylic ether acid as taught by Lang et al. (US' 231 B1) and to use the dyeing kit to arrive at the claimed

invention. Such a modification would be obvious because the primary reference of Lim et al. (US' 391 B1) suggests the use of surfactants in the dyeing compositions. Lang et al. (US' 231 B1) clearly teaches the claimed species of these surfactants and the dyeing kit, and thus, a person of the ordinary skill in the art would be motivated to use the dyeing kit and to incorporate the species of these surfactants in the dyeing composition of Lim et al. with a reasonable expectation of success for improving the dyeing properties of the composition such as thickening property and would expect such a composition to have similar properties to those claimed, absent unexpected results.

4       Claims 32-34 and 36-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lim et al. (US 6,461,391 B1) in view of Cottard et al. (US 2001/0023514 A1).

The disclosure of Lim et al. (US' 391 B1) as described above, does not teach or disclose the species of nonionic surfactants monoglycerolated or polyglycerolated fatty alcohols as claimed.

However, Lim et al. (US' 391 B1) suggests the use of nonionic surfactants in the hair dyeing composition (see col. 8, lines 23-25). It is further taught by Lim et al. (US' 391 B1) that the surfactants are included in the dyeing composition for various reasons, e.g., to assist in thickening, for forming emulsion, to help in wetting hair during application of the dye composition, etc. (see col. 8, lines 30-33).

Cottard et al. (US' 514 A1) in analogous art of hair dyeing formulation, teaches a composition comprising monoglycerolated or polyglycerolated fatty alcohols having a formula similar to the claimed formula (Vb) as claimed in claims 32-34 (see page 2, paragraphs, 0033-0037) and wherein the mono-or polyglycerolated surfactants are presented in the composition in

the amounts of 0.1 to 15% by weight which covered the claimed ranges as claimed in claims 36-37 (see page 2, paragraph, 0039).

Therefore, in view of teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made, would be motivated to modify the dyeing composition of Lim et al. (US' 391 B1) by incorporating the nonionic surfactants of monoglycerolated or polyglycerolated fatty alcohols as taught by Cottard et al. (US' 514 A1) to arrive at the claimed invention. Such a modification would be obvious because the primary reference of Lim et al. (US' 391 B1) suggests the use of surfactants in the dyeing compositions. Cottard et al. (US' 514 A1) clearly teaches the claimed species of these surfactants, and thus, a person of the ordinary skill in the art would be motivated to incorporate the species of these surfactants in the dyeing composition of Lim et al. with a reasonable expectation of success for improving the dyeing properties of the composition such as thickening property and would expect such a composition to have similar properties to those claimed, absent unexpected results.

With respect to claim 38, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate such a composition by optimizing the ratio between the concentrations of cationic tertiary para-phenylenediamine and the surfactants in order to get the maximum effective amounts of these dyeing ingredients in the composition because the percentage amounts of these dyeing ingredients are within the claimed ranges and a person of the ordinary skill in the art would expect these ingredients would have similar ratio as claimed, absent unexpected results.

Further, applicants have not shown on record the criticality of the claimed ratio between these dyeing ingredients.

***Allowable Subject Matter***

5       Claims 9 and 12-21 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art of record do not teach or disclose the limitations of these claims.

***Conclusion***

6       The references listed on from 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Eisa Elhilo  
Primary Examiner  
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March 8, 2006